



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order that the landlord comply with the Act. Both parties participated in the conference call hearing. Although the tenant was abruptly disconnected midway through the hearing, she was able to rejoin the call and the hearing concluded with both parties having been given full opportunity to be heard.

The tenant had made a previous application for an order that the landlord comply with the Act which was heard on October 7. The tenant did not participate in that hearing and her application was dismissed without leave to reapply. The landlord took the position that the tenant did not have the right to bring the application for an order that the landlord comply with the Act as this claim was dismissed in the October 7 hearing. I considered the tenant's claim for this order as the landlord has a continuing obligation to comply with the Act and the tenant's claim does not appear to focus on isolated incidents but on a continuing pattern of behaviour.

Issues to be Decided

Should the notice to end tenancy be set aside?

Should the landlord be ordered to comply with the Act?

Background and Evidence

The parties agreed that on October 7 the tenant was served with a one month notice to end tenancy. The notice alleges that the tenant has significantly interfered with or

unreasonably disturbed another occupant or the landlord and that she has seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The landlord testified that the tenant had been given 3 breach letters. The first, given on July 13 accused her of “disturbing/annoying other tenants with issues that don’t concern them, questioning, making them uncomfortable in the building.” The landlord testified that the tenant, who was of the opinion that the landlord did not apply the no pets rule even-handedly throughout the building, had canvassed a number of other tenants to see whether they had pets or whether they had received notice that the no pets policy would be strictly enforced. The landlord testified that she received complaints from several tenants who claimed that they were uncomfortable being questioned by the tenant and being asked to assist her in discussing the pet issue with the landlord. The landlord indicated that several tenants had said they had lengthy conversations with the tenant and that they did not want to hurt her feelings, so they avoided her.

The second breach letter, issued on July 31, stated that the tenant was “screaming using foul language towards another tenant, uttering threats to have them evicted.” The landlord testified that when she was disturbed late at night by another tenant, yelled and swore at that tenant, who complained to the landlord. The landlord testified that other tenants had overheard the altercation and also complained.

The third breach letter, issued August 17, identified a safety issue which involved a smoke alarm ringing continuously. The landlord testified that on August 13 the tenant’s smoke detector rang for an extended period of time, which caused other tenants some concern. The landlord’s husband eventually went to the rental unit and stopped the alarm, at the same time turning off burners which had been left on high.

The tenant acknowledged that she had approached several tenants to speak with them about pet issues, but denied intending to disturb other tenants and stated that conversations would also include other subjects. The tenant acknowledged that in late July she asked another tenant to reduce noise, but adamantly denied having screamed

or used foul language. The tenant acknowledged that her smoke detector activated on August 13 and testified that food she was cooking spilled onto a burner and she attempted to turn that burner as well as another off, but they did not click into the off position and stayed on without her knowledge. The tenant stated that this was just the second time in her tenancy that the detector had activated.

The parties also discussed whether the tenant had allowed a dog in her rental unit, but as the notice did not allege that the tenant had breached a material term of the tenancy, I find the issue to be irrelevant and I have not addressed that issue.

The tenant alleged that the landlord has persecuted and intimidated her and accused the landlord of attempting to gather evidence against her by interviewing other tenants. The tenant alleged that the landlord forced her to sign a notice advising her that she could not have visiting dogs on the premises by bringing two copies of the notice for her to sign. The tenant further alleged that she is aware of other tenants making noise and creating a disturbance and doing so apparently with impunity. The tenant also alleged that the landlord had targeted her by forcing her to abide by the no dogs policy while other tenants were not forced to do so.

Analysis

First addressing the notice to end tenancy, the landlord has the burden of proving that she has grounds to end the tenancy. I accept that the tenant has contacted neighbours in an effort to determine whether the pet policy is being consistently enforced. I further accept that those tenants find this contact disturbing. However, I am unable to find that this disturbance is unreasonable or that at this point, it can be characterized as a significant interference. If it continues and the landlord continues to receive similar complaints now that the tenant is aware that other tenants find her questioning disturbing, it may give the landlord cause to end the tenancy in the future. I am not persuaded that one altercation with another occupant, regardless of whether it involved raised voices or foul language as is alleged in the incident in late July, is sufficient to establish unreasonable disturbance or significant interference.

Although the incident with the smoke alarm is a legitimate concern, I am unable to find that such an isolated event can be said to have seriously jeopardized the health, safety or lawful rights of other occupants or the landlord. I find that the landlord has failed to prove that she has grounds to end the tenancy and accordingly I order that the notice to end tenancy dated October 7, 2010 be set aside and of no force or effect.

I find that the tenant has failed to prove that the landlord has intimidated or persecuted her. The fact that she brought two copies of a notice for the tenant to sign does not constitute harassment in any sense. I find that the landlord had an obligation to investigate complaints brought against the tenant and was therefore justified in asking other occupants about their concerns regarding the tenant. I dismiss the tenant's claim for an order that the landlord comply with the Act.

Conclusion

The notice to end tenancy is set aside. As a result, the tenancy will continue. The claim for an order that the landlord comply with the Act is dismissed as unproven.

Dated: November 09, 2010

Dispute Resolution Officer